

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 8, 2008 Session

MECHICO HILL v. JOHN DOE, ET AL.

**Appeal from the Circuit Court for Davidson County
No. 06C1530 Walter Kurtz, Judge**

No. M2007-01139-COA-R3-CV - Filed June 30, 2008

The issue on appeal in this subrogation action is whether the insurance company's subrogation claim is barred by the doctrine of collateral estoppel due to the fact its insured's previous general sessions action against the same defendant concerning the same vehicular accident was dismissed and is a final judgment. The circuit court judge denied the defendant's motion for summary judgment, which was on the issue of collateral estoppel, due to the fact it could not determine from the scant general sessions' record that the issue the defendant sought to preclude was litigated and decided on its merits in the previous action in general sessions court. We affirm the decision of the circuit court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and ANDY BENNETT, J., joined.

M. Ben Moore, II, Nashville, Tennessee, for the appellant, Tri-Star Waste Systems, Inc.

Christian M. Garstin, Nashville, Tennessee, for the appellee, Nationwide Mutual Insurance Company.

OPINION

Nationwide Mutual Insurance Company ("Nationwide") provided automobile insurance coverage for Michael Hart, the owner of a vehicle involved in a hit-and-run accident on February 6, 2003. Mr. Hart, however, was not in the vehicle at the time of the accident. Rather, his friend, Mechico Hill, was the driver and only occupant of the vehicle when the accident occurred. At the time of the accident, the truck that hit Mr. Hart's car did not stop. However, identifying information noted by Ms. Hill at the time later suggested that the truck was owned by Tri-Star Waste Systems, Inc. ("Tri-Star").¹

¹The identifying information also suggested that the driver was Tri-Star employee Jonathan Crumby. Mr. Crumby, however, separated from employment with Tri-Star shortly after the accident in question and was not named
(continued...)

After satisfying the property damage claim of its insured, Mr. Hart, Nationwide filed a civil warrant styled “*Nationwide Insurance Company a/s/o Michael Hart v. Tri-Star Waste Systems, Inc.*” to recover its damages against Tri-Star in January of 2004. The civil warrant in the first case stated:

[A] civil action brought by Nationwide Mutual Insurance Company a/s/o Michael Hart for \$1,003.29 in property damage paid to Plaintiff’s insured as a result of Defendant’s negligence and negligence per se in failing to maintain the proper lane of travel while making a left turn on White Bridge and Robertson Parkway on February 6, 2003, in Davidson County, Tennessee - plus any private process fees and costs of this suit.

Nationwide’s property damage claim was tried in the general sessions court, following which judgment was rendered for Tri-Star. That decision was not appealed, and thus, the judgment is final.

Subsequently, in February of 2004, Ms. Hill filed a general sessions warrant against Tri-Star seeking to recover for her personal injuries. In her suit, Ms. Hill also asserted an uninsured motorist claim against Nationwide, identifying it as an unnamed defendant. When Tri-Star appealed to Circuit Court, Ms. Hill voluntarily dismissed the action without prejudice. Thereafter, Ms. Hill filed a second suit in general sessions court on April 4, 2006, in which Nationwide was again an unnamed defendant.

Ms. Hill’s second general sessions action was appealed to the Circuit Court, following which Nationwide filed a Cross-Complaint against Tri-Star seeking to recover from Tri-Star any judgment that may be rendered against Nationwide. Before the case was tried in the circuit court, issues were raised as to whether Tri-Star should be considered an uninsured motorist and whether Nationwide could recover from Tri-Star any amount for which it may be liable should Tri-Star be declared uninsured. The parties agreed these issues could be handled by post-trial motions for summary judgment if and in the event Ms. Hill prevailed on her claim.

Following a trial of the claims asserted by Ms. Hill, the jury found that a truck owned by Tri-Star negligently collided with Ms. Hill and apportioned 100% of the fault against Tri-Star. Thereafter, the trial court determined that the truck owned by Tri-Star was “an uninsured motor vehicle” and that Nationwide, as the uninsured motorist carrier of the vehicle driven by Ms. Hill, was responsible for the judgment awarded to Ms. Hill.

It was at this point that the defense of collateral estoppel came into play. As a defense to Nationwide’s Cross-Complaint, wherein Nationwide sought to recover from Tri-Star any judgment that may be rendered against it, Tri-Star asserted that Nationwide’s claim was barred by the doctrine of collateral estoppel doctrine due to the fact, Tri-Star contended, the identical issue had been previously litigated in the general sessions action filed by Nationwide and that a final judgment had been entered in favor of Tri-Star.

¹(...continued)
as a defendant in any of the actions at issue and did not testify at trial.

When Tri-Star's motion for summary judgment on the issue of collateral estoppel came on for hearing, the circuit court stated that the task for the court was "to interpret the text of the final order from the General Sessions Court, which is the only evidence submitted in support of Tri-Star's collateral estoppel defense." The circuit court went on to state, "[h]aving carefully examined that order, this Court simply cannot declare that the issue of Tri-Star's negligence was necessarily determined in Tri-Star's favor." Whereupon, the circuit court denied the motion and this appeal followed.²

ANALYSIS

The only issue on appeal is whether Nationwide's claim is barred by the doctrine of collateral estoppel. This issue presents a question of law, which this court will review *de novo* without a presumption of correctness on appeal. *Mullins v. State*, No. E2007-01113-COA-R9-CV, 2008 WL 199854, at *4 (Tenn. Ct. App. Jan. 24, 2008) (no Tenn. R. App. P. 11 application filed) (citing *Tareco Properties Inc. v. Morriss*, No. M2002-02950-COA-R3-CV, 2004 WL 2636705, at *12 n.20 (Tenn. Ct. App. Nov. 18, 2004)).

For purposes of clarity, we find it appropriate to differentiate the doctrines of res judicata and collateral estoppel. Collateral estoppel and res judicata are related doctrines; however, they operate in separate ways to prevent inconsistent judicial decisions. Res judicata is said to act "like a bludgeon, indiscriminately smashing all efforts of a party to relitigate events that have already been litigated and decided in a prior suit." Joseph W. Glannon, *Civil Procedure: Examples and Explanations* 485 (4th ed. 2001). Collateral estoppel, on the other hand, "operates like a scalpel, dissecting a lawsuit into its various issues and surgically removing from reconsideration any that have been properly decided in a prior action." *Id.*

Res judicata serves to preclude *claims* that have once been litigated or could have been litigated. 22 *Tenn. Juris., Res Judicata* § 2 (2007). "Claim" is defined to include all rights arising out of a single transaction. *Glannon*, at 487 (citing Restatement (Second) of Judgments § 24 (1982)). Collateral estoppel, on the other hand, is an *issue* preclusion doctrine.

²The trial court also found that res judicata did not preclude Nationwide's Cross-Complaint. Tri-Star only appeals the trial court's finding that collateral estoppel does not preclude Nationwide's subsequent litigation.

The doctrine of collateral estoppel, as our courts explain, “bars the same parties or their privies from relitigating in a second suit *issues* that were actually *raised and determined* in an earlier suit.” *Beaty v. McGraw*, 15 S.W.3d 819, 824 (Tenn. Ct. App. 1998) (citations omitted) (emphasis added). In other words, “when an issue has been actually and necessarily *determined* in a former action between the parties, that determination is conclusive against them in subsequent litigation.” *Id.* (emphasis added). The doctrine of collateral estoppel may be used defensively or offensively. *Id.* at 825-26. Therefore, the doctrine of collateral estoppel may be asserted as a defense to foreclose relitigating an issue the same parties previously determined in another action. *Id.* at 825.

In the present case, Tri-Star has asserted the doctrine defensively to prevent Nationwide from relitigating the issue of Tri-Star’s negligence. To successfully invoke the doctrine of collateral estoppel, Tri-Star has the burden of proof. *Id.* at 824. To successfully invoke the collateral estoppel doctrine, Tri-Star must prove:

1. That the issue sought to be precluded is identical to the issue decided in the earlier suit;
2. That the issue sought to be precluded was actually litigated and decided on its merits in the earlier suit;
3. That the judgment in the earlier suit has become final;
4. That the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier suit;
5. That the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier suit to litigate the issue now sought to be precluded.

Id. at 824-25. We find the second requirement – that the issue sought to be precluded was actually litigated and decided on its merits in the earlier suit – to be dispositive of this appeal.

Tri-Star contends that the question of its negligence was resolved in its favor by the first general sessions court judgment. Indeed, it is clear from the record that judgment was entered in favor of Tri-Star and that the case was dismissed with prejudice following trial; however, we have no way of knowing whether the issue of Tri-Star’s alleged negligence was determined at trial or whether the case was dismissed on other grounds.

The only evidence submitted by Tri-Star is support of its collateral estoppel defense is the civil warrant and the judgment noted thereon in the general sessions court. The relevant part of the civil warrant is the section titled JUDGMENT where the judge of the general sessions court indicates its ruling. Civil warrants in general sessions court, and the judgment section therein, are printed as fill-in-the-blank forms. The blank form of the section of the civil warrant form titled JUDGMENT is as follows:

JUDGMENT

Judgment for _____ against _____
for \$ _____ plus interest at the rate of _____ % and cost of suit,
for which execution may issue;

Judgment entered by: ☐ Default ☐ Agreement ☐ Trial

Dismissed: ☐ Without Prejudice ☐ With Prejudice

Costs taxed to: ☐ Plaintiff ☐ Defendant

....

This the _____ day of _____, 20____.
_____, Judge, Division _____

The notations appearing on the judgment in the first suit, which appear in the form of an “X” or a circle, clearly indicate that judgment was entered following trial, that Nationwide’s claim was dismissed with prejudice, and that costs were taxed to Nationwide. This is evident from the mark “X” appearing in the box next to “trial,” a circle around the word “Dismissed” in conjunction with the mark “X” in the box next to “With Prejudice,” and the mark “X” in the box next to “Plaintiff” indicating that costs were taxed to “Plaintiff,” which was Nationwide. The only other markings in this section were the date, May 28, 2004, and the signature of the judge of Division IV.

The judgment tells us that Nationwide’s case was dismissed with prejudice following trial but it does not tell us the basis upon which the court decided to dismiss the case. It is entirely possible that the general sessions court determined that Tri-Star was not negligent and the case was dismissed on that determination; however, it is also possible that the court dismissed the case for other meritorious reasons.

For Tri-Star to prevail on the basis of the doctrine of collateral estoppel, it had the burden to establish that the issue at the center of the controversy, whether Tri-Star’s negligence contributed to the cause of the accident, was actually litigated and determined by the general sessions court in the first general sessions action brought by Nationwide. The record before us fails to establish that the issue of Tri-Star’s negligence was actually litigated and decided by the general sessions court in the first case. Thus, Tri-Star was not entitled to summary judgment on the issue of collateral estoppel. As the circuit court judge correctly explained, “[h]ad the general sessions judge articulated reasons for the rendered decision rather than simply noting that the suit was dismissed with prejudice, this Court’s decision might be different.”³

³ As this court noted in *Stewart v. Cottrell*, No. M2006-02253-COA-R3-CV, 2007 WL 2827417, at *4 n.4 (Tenn. Ct. App. Sept. 28, 2007) (perm. app. denied Mar. 10, 2008) (citing *Christopher v. Spooner*, 640 S.W.2d 833, 837 (Tenn. Ct. App. 1982)), there is a long standing and wholly acceptable practice of the general sessions courts to state
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Because Tri-Star had the burden to prove all of the essential elements, our finding that the second essential element of the doctrine of collateral estoppel was not established renders our consideration of the other essential elements moot.⁴

For the reasons stated above, we affirm the circuit court's decision to deny Tri-Star's motion for summary judgment.

IN CONCLUSION

The judgment of the circuit court is affirmed, and this matter is remanded with costs of appeal assessed against Tri-Star Waste Systems, Inc.

FRANK G. CLEMENT, JR., JUDGE

³(...continued)

in relatively brief fashion the action taken and judgment of the court on the civil warrant form. *Id.* As the affidavit of the circuit court clerk filed in that case confirmed, "Separate formal order and/or judgments are not required to be filed in the Davidson County General Sessions Court. Instead, a judgment, order and/or order of voluntary nonsuit can be perfected by a notation on the Civil Warrant, and this notation has the same effect as if an order has been entered." *Id.*

⁴Tri-Star also asserted on appeal that Tenn. Code Ann. § 20-9-503 operated to bar Nationwide's claim under the doctrine of collateral estoppel. We find no merit to this contention and see no need to discuss the issue due to the fact Title 20, which codifies the Tennessee Rules of Civil Procedure, does not apply to general sessions courts. *See* Tenn. R. Civ. P. 1.